

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

C.A. No.:

FILING FEE PAID:

RECEIPT #

AMOUNT \$

BY DEPT CLERK

DATE

ALL CHECKS CASHED, INC.

Plaintiff,

v.

REGISCOPE DIGITAL IMAGING, LLC

Defendant

COMPLAINT
AND JURY DEMAND

04 - 11495 WGY

MAGISTRATE JUDGE

NATURE OF ACTION

1. This is a diversity action brought by All Checks Cashed, Inc. ("ACC") a Massachusetts corporation that operates a licensed check cashing service, against Regiscope Digital Imaging, LLC ("RDI"), a New Jersey limited liability company, for breach of contract, breach of warranty and negligence in failing to properly provide film, process the film and store the film, which failures contributed to the Plaintiff's loss of almost \$100,000 in value of checks purchased by ACC.

PARTIES

2. The Plaintiff, ACC, is a Massachusetts corporation, with a usual place of business at 595 Washington Street, Dorchester, Suffolk County, Massachusetts. ACC is in the business of financial exchanges, including but not limited to purchasing negotiable instruments such as checks from individuals and businesses.

3. The Defendant, RDI, is on information and belief a New Jersey limited liability company with a home office at 927 Stuyvesant Avenue, Union, New Jersey. RDI is in the business of providing security cameras and films to entities that accept or purchase checks in the course of their business.

KENNETH I. GORDON

Attorney At Law

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Boston, MA 02109
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kgordon@socialaw.com



MAINE
JUL 1 2004
DISTRICT CLERK
U.S. DISTRICT COURT
DISTRICT OF MASS.
JUL 1 2004
U.S. DISTRICT COURT
DISTRICT OF MASS.

Also admitted in Maine

June 30, 2004

United States District Court
Office of Civil Clerk
One Courthouse Way
Boston, MA 02210

RE: All Checks Cashed, Inc. v. Regiscope, LLC; Original Complaint

Dear Sir/Madam:

Enclosed please find the original Complaint of All Checks Cashed, Inc., along with the filing fee and cover sheet.

Very truly yours,

A handwritten signature in black ink, appearing to be 'K. Gordon', written over a horizontal line.

Kenneth I. Gordon

KIG:enc.

JURISDICTION and VENUE

4. This Court has subject matter jurisdiction to hear this matter pursuant to 28 U.S.C. § 1332 because the parties are citizens of different states and the amount in controversy exceeds the jurisdictional limit of \$75,000. The Court has Personal Jurisdiction over the Defendant because the Defendant is engaged in business in Massachusetts.

5. This Court has venue to hear this action pursuant to 28 U.S.C. § 1391 et seq., on the basis that the Plaintiff is a resident of Massachusetts and the loss occurred in Massachusetts.

FACTS

6. For many years, ACC relied on RDI to provide monitoring services to protect it in the case that checks were lost or stolen while in its possession. ACC purchased cameras from RDI and engaged in a contract by which RDI agreed to supply, develop, catalogue and store the film required and used by the camera.

7. RDI warranted that its equipment and services were fit for the purpose of providing photographic evidence of checks that were presented to ACC and cashed by it, so that in the case that ACC required proof of the existence and appearance of the checks, such proof would be available to it.

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

1. TITLE OF CASE (NAME OF FIRST PARTY ON EACH SIDE ONLY) All checks Cashed Inc. v. Regiscope LLC

2. CATEGORY IN WHICH THE CASE BELONGS BASED UPON THE NUMBERED NATURE OF SUIT CODE LISTED ON THE CIVIL COVER SHEET. (SEE LOCAL RULE 40.1(A)(1)).

I. 160, 410, 470, R.23, REGARDLESS OF NATURE OF SUIT.

II. 195, 368, 400, 440, 441-444, 540, 550, 555, 625, 710, 720, 730, 740, 790, 791, 820*, 830*, 840*, 850, 890, 892-894, 895, 950. *Also complete AQ 120 or AQ 121 for patent, trademark or copyright cases

☒ III. 110, 120, 130, 140, 151, 190, 210, 230, 240, 245, 290, 310, 315, 320, 330, 340, 345, 350, 355, 360, 362, 365, 370, 371, 380, 385, 450, 891.

IV. 220, 422, 423, 430, 480, 510, 530, 610, 620, 630, 640, 650, 660, 690, 810, 861-865, 870, 871, 875, 900.

V. 150, 152, 153.

3. TITLE AND NUMBER, IF ANY, OF RELATED CASES. (SEE LOCAL RULE 40.1(G)). IF MORE THAN ONE PRIOR RELATED CASE HAS BEEN FILED IN THIS DISTRICT PLEASE INDICATE THE TITLE AND NUMBER OF THE FIRST FILED CASE IN THIS COURT.

4. HAS A PRIOR ACTION BETWEEN THE SAME PARTIES AND BASED ON THE SAME CLAIM EVER BEEN FILED IN THIS COURT?

YES NO

5. DOES THE COMPLAINT IN THIS CASE QUESTION THE CONSTITUTIONALITY OF AN ACT OF CONGRESS AFFECTING THE PUBLIC INTEREST? (SEE 28 USC §2403)

YES NO

IF SO, IS THE U.S.A. OR AN OFFICER, AGENT OR EMPLOYEE OF THE U.S. A PARTY?

YES NO

6. IS THIS CASE REQUIRED TO BE HEARD AND DETERMINED BY A DISTRICT COURT OF THREE JUDGES PURSUANT TO TITLE 28 USC §2284?

YES NO

7. DO ALL OF THE PARTIES IN THIS ACTION, EXCLUDING GOVERNMENTAL AGENCIES OF THE UNITED STATES AND THE COMMONWEALTH OF MASSACHUSETTS ("GOVERNMENTAL AGENCIES"), RESIDING IN MASSACHUSETTS RESIDE IN THE SAME DIVISION? - (SEE LOCAL RULE 40.1(D)).

☒ YES NO

A. IF YES, IN WHICH DIVISION DO ALL OF THE NON-GOVERNMENTAL PARTIES RESIDE?

☒ EASTERN DIVISION ☐ CENTRAL DIVISION ☐ WESTERN DIVISION

B. IF NO, IN WHICH DIVISION DO THE MAJORITY OF THE PLAINTIFFS OR THE ONLY PARTIES, EXCLUDING GOVERNMENTAL AGENCIES, RESIDING IN MASSACHUSETTS RESIDE?

☐ EASTERN DIVISION ☐ CENTRAL DIVISION ☐ WESTERN DIVISION

(PLEASE TYPE OR PRINT)

ATTORNEY'S NAME Kenneth Gordon

ADDRESS 63 Chatham St

TELEPHONE NO. Boston MA 02109

8. ACC retained RDI for these purposes and provided valuable consideration. As RDI was aware, the reason ACC retained RDI was to obtain documentary proof of the existence of checks it accepted, to use as proof of the checks in the event they were lost, stolen, or otherwise unavailable to ACC before they were deposited with ACC's bank.

9. On February 20, 2003 several checks that were purchased by ACC were lost or otherwise unavailable before they were presented for deposit with ACC's bank. ACC was informed by the bank that it would be given credit for the funds represented by the checks, if it could provide proof of the checks, in the form of a photograph of the checks.

10. ACC immediately contacted RDI and requested copies of checks that were accepted on that day. In response to that request ACC was told:

- (a) that RDI had not been developing the film sent to RDI by ACC for several years, and as a consequence could not have known whether the images of the checks were captured on film;
- (b) that Regiscope had been supplying ACC with incompatible film for the cameras it provided; and
- (c) that as a consequence of the improper film and failure of RDI to provide development services, RDI did not possess photographs of the checks that were lost and none could be provided to ACC.

11. After learning the events described in Paragraph 10 above, ACC was also told by DRI that what film could be developed had been underexposed because it was the incorrect film for ACC's cameras, and that was overdeveloped by RDI. Had Regiscope

CIVIL COVER SHEET

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

All Checks Cashed
595 Washington St
Boston MA

(b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF Suffolk
(EXCEPT IN U.S. PLAINTIFF CASES)

DEFENDANTS

Regiscope LLC
New Jersey

COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT: NEW JERSEY
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

(c) ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER)

Kenneth I. Borden
63 Chapman St
Boston MA 02109

ATTORNEYS (IF KNOWN)

04-11495 WGY

II. BASIS OF JURISDICTION

(PLACE AN "X" IN ONE BOX ONLY)

- ☐ 1 U.S. Government Plaintiff
☐ 2 U.S. Government Defendant
☐ 3 Federal Question (U.S. Government Not a Party)
☒ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES

(For Diversity Cases Only)

(PLACE AN "X" IN ONE BOX FOR PLAINTIFF AND ONE BOX FOR DEFENDANT)

- | | | | |
|---|---|---------------------------------------|---------------------------------------|
| PTF | DEF | PTF | DEF |
| <input checked="" type="checkbox"/> 1 | <input type="checkbox"/> 1 | <input checked="" type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of This State | Incorporated or Principal Place of Business in This State | | |
| <input type="checkbox"/> 2 | <input checked="" type="checkbox"/> 2 | <input type="checkbox"/> 5 | <input checked="" type="checkbox"/> 5 |
| Citizen of Another State | Incorporated and Principal Place of Business in Another State | | |
| <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |
| Citizen or Subject of a Foreign Country | Foreign Nation | | |

IV. ORIGIN

(PLACE AN "X" IN ONE BOX ONLY)

- ☒ 1 Original Proceeding
☐ 2 Removed from State Court
☐ 3 Remanded from Appellate Court
☐ 4 Reinstated or Reopened
☐ 5 Transferred from another district (specify)
☐ 6 Multidistrict Litigation
☐ 7 Appeal to District Judge from Magistrate Judgment

V. NATURE OF SUIT

(PLACE AN "X" IN ONE BOX ONLY)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input checked="" type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury PERSONAL INJURY - Med. Malpractice <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 366 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 620 Copyrights <input type="checkbox"/> 630 Patent <input type="checkbox"/> 640 Trademark	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce/ICC Rates/etc. <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 610 Selective Service <input type="checkbox"/> 650 Securities/Commodities/Exchange <input type="checkbox"/> 675 Customer Challenge 12 USC 3410 <input type="checkbox"/> 681 Agricultural Acts <input type="checkbox"/> 682 Economic Stabilization Act <input type="checkbox"/> 683 Environmental Matters <input type="checkbox"/> 684 Energy Allocation Act <input type="checkbox"/> 685 Freedom of Information Act <input type="checkbox"/> 690 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 695 Constitutionality of State Statutes <input type="checkbox"/> 699 Other Statutory Actions
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 446 Other Civil Rights	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence HABEAS CORPUS: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition	LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 750 Other Labor Litigation <input type="checkbox"/> 761 Empl. Ret. Inc. Security Act	SOCIAL SECURITY <input type="checkbox"/> 661 HIA (1395ff) <input type="checkbox"/> 662 Black Lung (923) <input type="checkbox"/> 663 DRWC/DWW (405(g)) <input type="checkbox"/> 664 SSID Title XVI <input type="checkbox"/> 665 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 670 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 671 IRS - Third Party 26 USC 7609

VI. CAUSE OF ACTION

(CITE THE U.S. CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE BRIEF STATEMENT OF CAUSE. DO NOT CITE JURISDICTIONAL STATUTES UNLESS DIVERSITY.)

Breach of Contract. Negligence + Breach of Warranty for failing to process security film

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 ☐

DEMAND \$ 97,093.85 CHECK YES only if demanded in complaint:
JURY DEMAND: ☒ YES ☐ NO

VIII. RELATED CASE(S) IF ANY

JUDGE

DOCKET NUMBER

DATE

SIGNATURE OF ATTORNEY OF RECORD

7/1/04

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____

been processing the film concurrent with its receipt, as it was contractually obligated to do, it would have discovered the error before any loss by ACC had occurred.

12. As a direct and proximate cause of the unavailability of images of the checks in question, ACC has determined its loss to be \$97,073.85. It has reached that determination by comparing register receipts to remaining checks during the day in question. The loss represents the discrepancy between those figures.

13. ACC attempted to mitigate its damage by researching any other possible avenues for evidence of any checks that could be identified and repaid. Despite this established loss, mitigation of the claim and willingness to work with RDI and its insured toward an efficient resolution of this matter, ACC was presented on November 5, 2003 with a general denial of liability by RDI's insurance carrier.

COUNT I
BREACH OF CONTRACT

14. The Plaintiff repeats and incorporates by reference the allegations of Paragraphs 1-13 of the Complaint as if set forth herein.

15. The Plaintiff and Defendant entered a contract by which ACC would pay RDI a fee and in return RDI would supply ACC with proper film for the camera provided by RDI, and that RDI would develop the film and then catalogue and store the developed film.

16. RDI breached its contract with ACC by failing to provide the proper film, and by failing to develop the film on a timely basis.

17. The breach of contract caused harm to the Plaintiff, when checks it had purchased were lost, stolen or otherwise unavailable to be presented to its bank for


JURY DEMAND

The Plaintiff requests a jury trial on all Counts on which it is entitled to a jury.

Respectfully submitted,

All Checks Cashed, Inc.

By its attorneys,

A handwritten signature in black ink, appearing to read 'Kenneth I. Gordon', is written over a horizontal line.

Kenneth I. Gordon
63 Chatham Street, Third Floor
Boston, Massachusetts 02109
(617) 742-4602

payment, and images RDI should have catalogued were not available as proof that could have enabled ACC to be paid for the checks.

18. The loss suffered by ACC was foreseeable, and amounted to \$97,073.85. The loss also includes payment by ACC for services that were never provided, which payments ACC will demonstrate at trial.

WHEREFORE, the Plaintiff prays this Court enter judgment in favor of the Plaintiff and against the Defendant for Breach of Contract in the amount of \$97,073.85, plus payments it made to the Defendant for services it did not receive, together with interest and the costs of this litigation.

COUNT II
BREACH OF WARRANTY

19. The Plaintiff repeats the allegations of Paragraphs 1 through 13, and 15-18 as if specifically set forth herein.

20. In engaging in a contract with ACC to supply ACC with a camera, film for that camera and development, storage and cataloging services, RDI provided an express warranty, an implied warranty of merchantability and/or a warranty of fitness for a particular purpose.

21. RDI breached its express or implied warranties, or both, when it failed to deliver to ACC the proper film for its camera or to promptly develop and catalogue the film so that it could be used by ACC for proof of the existence and appearance of the checks.

22. RDI's breach of warranty to provide proper film and promptly develop and catalogue the film was the proximate and direct cause of ACC's loss in the amount of \$97,073.85.

WHEREFORE, the Plaintiff prays this Court award judgment in favor of ACC and against RDI for Breach of Warranty in the amount of \$97,073.85, plus interest from the date of the filing of this Complaint, and the costs of this litigation.

COUNT III
NEGLIGENCE

23. The Plaintiff repeats the allegations of Paragraphs 1-13, 15-18 and 20-22 as if specifically set forth herein.

24. RDI owed ACC a duty to use reasonable care in the provision and development of film and development services.

25. RDI fell below the standard of care of a reasonable provider of such material and service in like circumstances when it failed to take steps to promptly develop film supplied to ACC and then returned to it for development, which, if such steps had been taken, would have revealed that the film was inadequate for ACC's particular purpose and would have prevented loss if discovered timely.

25. ACC suffered foreseeable harm when it lost \$97,073.85, when checks purchased by ACC were lost, stolen or otherwise unavailable to ACC for deposit with its bank, and ACC had no photographic evidence of the check, the very harm RDI was retained to prevent.

26. Had photographic evidence of the checks been presented for payment, such presentment would be honored and paid as if ACC possessed the checks themselves. In the absence of the photographic evidence, ACC lost the entire value of the checks.

WHEREFORE, the Plaintiff prays this Court award ACC damages for RDI's negligence in the amount of \$97,073.85, plus interest from the date of the filing of this Complaint, and the costs of this litigation.